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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.344 OF 2001

APPELLANT Ramcharan.

Vs

RESPONDENT The State of Chhattisgarh.

CRIMINAL APPEAL NO.382 OF 2001

APPELLANTS Rampyare & others

Vs

RESPONDENT The State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge
1.7.2007

HON'BLE MR. L.C.BHADOO, J

Sd/-
L.C. BHADOO
Judge
__.07.2007

POST FOR JUDGMENT ON 03rd JULY, 2007

Sd/-
Dhirendra Mishra
Judge
2 .07.2007

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(52)

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. L.C. BHADOO &
HON. MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.344 OF 2001

APPELLANT — Ramcharan, son of Chintaram, aged about 55 years, R/o Village Pendri, P.S. Janjgir, District Janjgir-Champa (C.G.)

Vs

RESPONDENT — The State of Chhattisgarh, through the Station House Officer, Janjgir, District Janjgir Champa (C.G.)

CRIMINAL APPEAL NO.382 OF 2001

APPELLANTS
1. Rampyare, son of Maniram, aged 60 years, resident of Village Pendri, Janjgir.
2. Ramavtar, son of Rampyare, aged 30 years, Occupation Labour, resident of Village Pendri.
3. Mohitram, son of Rampyare aged 30 years, Occupation Labour, resident of Village Pendri.

Vs

RESPONDENT — The State of Chhattisgarh, through the Station House Officer, Janjgir, District Janjgir Champa (C.G.)

Present:

Mr. V.C. Ottalwar, Advocate for appellant in Cr. A. No.344/01.

Mr. Santosh Bharat, Advocate for appellants in Cr. A. No.382/01.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State.

JUDGMENT

(Delivered on 03.7.2007)

Per Dhirendra Mishra, J:

1. Criminal Appeal No.344/2001 & Criminal Appeal No.382/01 are being decided by this common judgment, as both these appeals are arising out of the judgment dated 30.3.2001 passed by learned Additional Sessions Judge, Janjgir in Sessions Trial No.32/97 whereby learned

Additional Sessions Judge after holding the appellants guilty for causing deaths of deceased Tulsiram, Bullu Kashyap & Kachra Bai, convicted them under Section 302/34 of the Indian Penal Code and sentenced each of them to undergo R.I. for life and to pay a fine of Rs.200/- for each murder. It has been further directed that all the sentences shall run concurrently.

2. Case of the prosecution, as unfolded from the charge sheet, F.I.R. and statement of witnesses, is that deceased Tulsiram, Chintraram, father of appellant Ramcharan, Maniram, father of appellant Rampyare & Dasrath were brothers. Appellant Mohitram & Ramawtar are sons of Rampyare. Before the date of incident Dashrath had died leaving behind two daughters, partition had taken place in the family and each share holder got 2.5 acre of agricultural land in partition, dwelling house was also partitioned and there was a dispute regarding share of Dashrath. From the evidence available on record it also appears that share of Radhabai, widow of Dashrath, was in possession of deceased Tulsiram. A Panchayat was convened by Rampyare to resolve the family dispute. Tulsiram had stocked 8-10 Gada of soil before the door of accused Rampyare.

3. Investigation of the offence was commenced after report (Ex.P-1) was lodged by Nanki Noni, wife of deceased Bullu Ram Kashyap at about 3.35 pm on 13.10.1996 in the Police Station Janjgir mentioning therein that she resides at Pendri with her father-in-law, Rampyare, son of Maniram, resides nearby her house, the quarrel had ensued between Tulsiram & Rampyare some five years back in connection with encroachment of government land and today, Tulsiram and her husband were affixing pegs over the above encroached land and because of this Mohitram, Ramawtar, Rampyare & Ramcharan together picked up the quarrel with Kachra Bai in the afternoon at about 2.00 p.m. on the backyard of the house. Hearing this, her father-in-law went there, whereupon all the four started assaulting him. Mohitram assaulted him with rod and Ramawtar, Ramcharan &

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Rampyare assaulted him by lathi as a result of which her father-in-law fell down there. Her mother-in-law tried to intervene, whereupon she was also assaulted by them and she also fell down there. Thereafter, all of them went to the house of Bhuwan Kashyap where her husband was sitting and assaulted him with lathi and rod. They dragged him towards her house. Mohitram brought heavy hammer from his house and assaulted her husband over his head in her house, as a result of which he died. Thereafter, Mohitram went behind the house in the kitchen garden and assaulted her father-in-law and mother-in-law over their head by heavy hammer as a result of which both of them died. All the four accused persons started searching her son Raju, who had fled out of fear. Dead body of her husband is lying in the courtyard of her house. Dead body of her mother-in-law is also lying in the courtyard, whereas, dead body of her father-in-law is lying in the kitchen garden. Maarpeet was witnessed by Manharan Gond, her daughter Vimla, Pramila, Raju, Jankibai and Suresh. On the basis of information of complainant Nanki Noni, merg intimation of Ex.P-50 of Tulsiram, Ex.P-51 of Kachra Bai & Ex.P-52 of Bullu Kashyap were recorded.

4. Inquest report (Ex.P-16, P-18 & P-20) over dead bodies of deceased Kachra Bai, Tulsiram and Bullu Kashyap were prepared in presence of the witnesses and thereafter dead bodies were sent for postmortem examination to the Primary Health Centre, Janjgir, where Dr. H.R. Tharwani (PW-8) conducted postmortem over the body of deceased Bulluram and gave his report Ex.P-16. Dr. U.C. Sharma (PW-9) conducted postmortem over the dead body of deceased Kachra Bai and prepared the postmortem report Ex.P-28. Dr. A.K. Dwivedi (PW-10) performed autopsy over the body of deceased Tulsiram and his report is Ex.P-31. He had also examined injured Raju @ Rajkumar on 13.10.1996 around 11.00 p.m. and his MLC report is Ex.P-34.

5. On the memorandums of Ramawtar (Ex.P-1), blood stained club, crowbar, shirt, full pant were recovered under Ex.P-12, on memorandum of Mohitram (Ex.P-2) blood stained iron rod, pant & white shirt were recovered under Ex.P-11; on the memorandum of Ramcharan (Ex.P-3) blood stained iron chatwar fixed in a wooden lathi and white dhoti were recovered under Ex.P-10 and on the memorandum of Rampyare (Ex.P-4) blood stained lathi & lungi were recovered from vide Ex.P-9. Blood stained soil and plain soil was taken into possession from the place where dead bodies of deceased Tulsiram, Kachra Bai & Bullu Kashyap under Ex.P-5, Ex.P-7 & Ex.P-8 were lying. After cutting the nails of accused persons, the same were taken into possession under Ex.P-35, P-36, P-37 & P-38 respectively. Blood stained seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex.P-41. Seized weapons i.e. lathi, Chatwar, iron rod, heavy hammer etc were sent to the doctor for his opinion vide Ex.P-44, P-45 & P-46 whereupon the doctor vide Ex.P-32, P-33 & P-29 opined that all the injuries described in the postmortem report could be caused by the weapons of offence. Spot map (Ex.P-23) was got prepared by Halka Patawri. Accused Ramcharan was also sent for medical examination to Primary Health Centre, Janjgir vide Ex.P-55 where Dr. U.C. Sharma (PW-9) examined him and gave his report Ex.P-56. Report of FSL is Ex.P-57. Seized articles were also sent to Serologist for further confirmation of the origin of blood present over the seized articles, from where report was received.

6. After completing investigation, charge sheet was filed against the accused/appellants in the Court of Judicial Magistrate First Class, Janjgir who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by learned Additional Sessions Judge, Janjgir who framed charges separately under Section 302/34 of the IPC against the accused

persons for causing death of Kachra Bai, Tusliram & Bullu Kashyap. The accused persons abjured their guilt.

7. The prosecution in order to establish the charges against the accused persons examined 22 witnesses in all. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case. Accused Rampyare took a defence that on the date of incident he was sitting before his house at that time Tulsiram started fencing the government land situated before Bullu's house. When they stopped, he abused him and threatened him of beating. At that time, he was alone in his home, as both his sons had gone to work. He got frightened and cried for help, whereupon his neighbourers assembled and stopped Tulsi & Bullu from abusing and involving in quarrel. When they did not stop, they confined him in the house. Deceased Tulsiram & Bullu continued abusing and thereafter what happened he does not know. Ultimately, he pleaded innocence and false implication. Appellant Mohitram also denied the incriminating circumstances and stated that on the date of incident he had gone to the house of Verma Saheb of Irrigation Department to do the work from 8.00 a.m. He does not know anything about the incident, he is innocent and has been falsely implicated in the crime. Appellant Ramcharan has also taken a defence that he is the Panch of Ward No.4 of the village, at about 2.0 p.m. a child came to call him to persuade them, on which he went with that child and asked Tulsiram & Bullu not to fight, as the land in question is an encroached land and advised them to get the matter resolved through Sarpanch by mediation, whereupon Tulsiram abused him and assaulted him by lathi as a result of which he fainted down and thereafter what had happened he does not know. Appellant Ramawtar also denied the allegation of prosecution case and stated that he had gone to Laxmi Rice Mill in connection with

some work. He does not know anything about the incident, he is innocent and has been falsely implicated in the crime.

8. Learned trial court after hearing the counsel for the parties, convicted and sentenced the appellants, as mentioned above.

9. Learned counsel for the appellants have not disputed the homicidal deaths of Tulsiram, Bullu Kashyap & Kachra Bai. Even otherwise from the statement of Dr. H.R. Tharwani (PW-8), who has proved the postmortem report of Bullu Kashyap and found the injuries on his person described herein below, homicidal death of Bullu Kashyap is established.

- Visible brain material had come out from parietal occipital and temporal parietal region and blood was clotted.

On external examination;

- Lacerated wound of size 3"x ½"x bone deep was present on occipital parietal region transverse in direction. Blood was clotted.
- Lacerated wound of size 8"x4" brain deep over temporal parietal region and frontal region on right side blood was clotted.
- Lacerated wound of size 5"x1" bone deep situated middle of chin. Clotted blood was present.

On internal examination;

- Fracture over occipital parietal region of size 3"x2"xbone deep. Blood was clotted. Dura matter was also found. Laceration over brain material.
- Fracture of temporal parietal region and frontal bone. Brain material had come out. Blood was clotted.
- Mandible bone was fracture on two parts and blood was clotted.

Opinion

Cause of death was shock as a result of external and internal bleeding due to head injury and injury over

mandible bone. Injuries present over person of deceased were sufficient in the ordinary course of nature to cause death.

10. Similarly, from the statement of Dr. U.C. Sharma (PW-9), who has conducted the postmortem examination over the person of deceased Kachra Bai and proved the postmortem report of Ex.P-28 and has found the injuries described herein below, homicidal death of Kachra Bai is established.

On external examination;

- Lacerated wound of size 13 cm x 5 c.m. on left temporal region of scalp, brain material was lacerated. Blood clotted was present. Bone chip of the above was removed.
- Face was flat and crushed and it was looking pale. Tongue was also pale.
- Lacerated wound of size 4cm x 2cm x 2cm on the left side of face in zygomatic area.
- Incised wound of size 6cm x 6cm bone deep over parietal skull and inside bone was fractured.
- Lacerated wound of size of 5cm x 2cm x 2cm over occipital parietal skull.
- Lacerated wound of size 3cm x 5cm x 1cm over left parietal skull just above Injury No.5.
- All the injuries were deeply stand and were not washable.

On internal examination;

- Brain membrane was found congested, brain material was lacerated and blood clotted was present.
- Contusion of size 20 x 10 x1 5 cm was present over left chest but 5th, 6th, 7th left ribs and 7th, 8th & 9th right ribs were fractured. All chambers of heart were empty. Laceration was visible over left ventricle of the injuries.
- All injuries were anit-mortem in nature and the same were caused within 24 hours of examination by some hard and blunt

object, except injury No.4 which was caused by some sharp edged weapon.

Opinion:

Cause of death is due to excessive bleeding and shock as a result of injuries described above and the same appears to be homicidal in nature.

11. From the evidence of Dr. A.R. Dwivedi (PW-10), who has proved the postmortem report (Ex.P-31) of deceased Tulsiram and found the injuries described herein below over the person of deceased, homicidal death of Tulsiram is established.

- Lacerated wound of size 5x4cm x 4cm on the middle of forehead. Bone of the area had come out in the form of chips and the brain material below the injury was lacerated and thick blood clot was present.
- Lacerated wound of size 4x1x1 cm on the right side of upper lips.
- Right maxilla together with right side of inciser and canine teeth were fractured. Multiple fractures were present over right mandible.
- Incised looking lacerated wound of size 4x1x1 cm on the occipital region of skull at middle line and vertical situation situated.
- Lacerated wound of size 2x1x0.5 cm on the rear side of left parietal region. Injury was obliquely placed.
- Multiple fractures over right humorous and right forearm.
- Compound multiple fracture over left humorous, one lacerated wound of size 3x1x2 cm upper 1/3rd portion of left arm of front side.
- Lacerated wound of size 4x1x1 cm over middle 1/3rd on left forearm in the front side. Compound multiple fractures over right leg bone. Bone ends were badly crushed and lower lacerated wound was visible. One lacerated wound of size

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10x5cm exposing bones and muscles was present over right leg at middle 1/3rd of frontal side. One lacerated wound of size 5x3cm x exposing bones and muscles, just above the right ankle. Fractured and badly crushed bone ends were visible.

- Compound multiple fractures over left leg bones coupled with lacerated wound was present. Broken bones were visible from crushed ends
  - Lacerated wound of size 10cm x 5 cm over middle 1/3rd part of left leg of front side. Bones and muscles were visible.
  - Lacerated wound of size 6cm x 4 cm just above the left ankle on frontal side, bones and muscles were visible.
- All the above injuries were caused by hard and blunt object and the same were anti-mortem in nature.

Opinion:

Cause of death has been opined as neurogenic shock and haemorrhage (bleeding) due to numerous injuries within 24 hrs from the postmortem examination.

12. Learned counsel for the appellants submitted that conviction is based on the statements of alleged eyewitnesses namely Nanki Noni (PW-2), Kum. Vimla (PW-5), Janki Bai (PW-11) and Raju @ Rajkumar (PW-19). Nanki Noni (PW-2) is the wife of deceased Bullu Kashyap, Vimla (PW-5) & Raju (PW-19) are the daughter & son of deceased Bullu Kashyap, whereas, Janki Bai (PW-11) is the sister of deceased Kachra Bai and as such they are highly interested witnesses. The independent witnesses though available have either not been examined or have not ~~been~~ supported the prosecution case. Independent witnesses namely Manharan Gond & Suresh, who have named as eyewitnesses in the FIR, have not been examined and there is no explanation for their non-examination. On close scrutiny of statements of these witnesses, it would be evident that they

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have tried to suppress the time and origin of incident, there are material contradictions and omissions in their statements and they also contradicted the version given by each other on material particulars. However, learned trial court has based the conviction of appellants by ignoring the material discrepancies present in the statements of these witnesses.

They further submit that the prosecution has suppressed the earlier report and FIR (Ex.P-1) is a fabricated document, as the same has been subsequently recorded after reaching the spot and after due deliberations possibly on the next day of occurrence i.e. on 14.10.2003. Fabrication of F.I.R. is also established from the fact that no evidence was adduced by the prosecution to the effect that after registering the offence the special report, as contemplated under Section 157 of the Cr.P.C., was immediately sent to the Magistrate concerned. From the prosecution evidence it would be evident that the incident occurred in the morning when pegs were being fixed by Tulsiram, the information of incident was available with the police even before 12.00 noon, the police personnel were already present in the village just after the incident and they accompanied complainant Nanki Noni (PW-2) to police station. However, the prosecution has suppressed the origin and genesis of the offence and F.I.R. is shown to be recorded at 3.35 p.m., wherein it is mentioned that incident occurred at 2.00 p.m., which on the face of the evidence available on record is false and fabricated.

They further submit that the Investigating Officer has not prepared the site plan immediately after reaching the spot which creates serious doubt about the truthful investigation. The manipulation in timing of the incident from 8-9 a.m. in the morning to 2.00 p.m. is deliberate because Nanki Noni (PW-2) had returned home at 12.00 noon, whereas Janki Bai (PW-11) had gone to Khokhra for treatment and returned from there only at 11-12 p.m. Raju @

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Rajkumar (PW-19) was also not present in the home, as he had gone to graze his buffaloes in the morning from where he returned only at about 11 a.m.

The prosecution witnesses have admitted this fact that the appellant Rampyare is unable to walk without support and he has been falsely implicated in the instant case because of land related dispute. The relations of deceased Tulsiram with the villagers were strained and the villagers had excommunicated him from society. He had enmity with certain villagers, as the villagers alleged that he indiscriminately used to beat villagers.

So far as the recovery of weapons of offence on disclosure statements of appellants is concerned, the witnesses of memorandums and recoveries have not supported the prosecution case and they have been declared hostile and further that weapons of offence allegedly seized from the appellants were not produced during trial and nor the same were shown to the doctor to ascertain whether the injuries present over the bodies of deceased persons could be caused by said weapons. In these circumstances, F.S.L. report regarding presence of blood over the seized weapons is of no consequence.

On the other hand, learned Additional Public Prosecutor for the State has supported the judgment of trial court and placing reliance upon the judgment in the matter of **Bikau Pandey Vs. State of Bihar** reported in **AIR 2004 SC 997** contended that there are four eyewitnesses to the incident and one of them namely Raju @ Rajkumar (PW-19) is an injured eyewitness. Their evidence cannot be discarded simply because they happened to be related to the deceased persons. Their version is duly corroborated from the report of chemical analysis and the report of Serologist, who have confirmed the presence of human blood on the weapons and blood stained clothing seized from the accused persons as also in the nails of the accused persons. The Investigating Officer has proved the

memorandums and recoveries which find corroboration from the statement of attesting witness namely Kartik Ram (PW-15) and also from the statement of Ratal Lal (PW-12).

He further submits that infirmities, irregularities or illegalities in the conduct or investigation are of no consequence where account of incident, as narrated by the witnesses, inspire confidence of the Court. Version of the prosecution also finds support from the statement of accused recorded under Section 313 of Cr.P.C. wherein appellant Ramcharan & Rampyare have admitted that some quarrel took place between the deceased and them in the afternoon.

13. We have heard learned counsel for the parties.

14. Findings recorded by the trial court in the impugned judgment for convicting the appellants are as under:-

- Nanki Noni, Vimla, Janki & Raju @ Rajkumar are eyewitnesses of the incident.
- Nanki Noni in her statement on oath has given a detail account of incident and has narrated the role played by each of the accused persons in assaulting her husband, father-in-law & mother-in-law.
- Version of Nanki Noni finds corroboration from the statement of Vimla, who is also an eyewitness of assault of Tulsi, Kachra Bai & Bullu Kashyap. Janki Bai is also an eyewitness of incident and version of above three witnesses is further confirmed by the statement of PW-19 Raju.
- The eyewitnesses account is further corroborated by promptly lodged FIR (Ex.P-1) as the incident is of 1400 hrs and the report was lodged on the same day at 1335 hrs by Nanki Noni (PW-2) in which the names of all the four appellants are mentioned as assailants. Their version is further corroborated by the postmortem report of all three

deceased persons and the injuries described by the eyewitnesses correspond to the injuries mentioned in the postmortem reports.

- Apart from above evidence, weapons of offence and blood stained clothing have been recovered on the memorandums of accused persons. Nails of accused persons were also got cut and were seized. Seized articles were sent for chemical examination to FSL and as per FSL report the seized articles were stained with blood and thus, the seizure of article on their memorandums and presence of blood in the seized articles is an additional evidence against the appellants.
- In the instant case there is evidence that the accused persons assaulted, therefore, in the facts and circumstances, it is presumed that the offence was committed by common intention by all four accused person.
- Non-explanation of the injuries present over the person of appellant Ramcharan will not make the case of the prosecution doubtful, as there is no evidence that the deceased persons were holding any weapon at the time of incident.
- The defence of appellant Rampyare has been negated with an observation that the appellant appeared before the Court and it was observed that he was not lame and with this findings convicted the appellants.

15. Since the total case of the prosecution is based on the statements of Nanki Noni Bai (PW-2), Kumari Vimla (PW-5), Janki Bai (PW-11) & Raju @ Rajkumar (PW-19), who are stated to be the eyewitnesses of the incident and conviction is also primarily based on the statement of these witnesses, we propose to scrutinize the statement of these witnesses in the light of arguments advanced by the respective parties.

NANKI NONI BAI (PW-2):

16. This witness has stated that the incident is of 13th October. Accused persons had objected and abused her mother-in-law (deceased Kachra Bai) and father-in-law (deceased Tulsiram) for fixing peg on abadi land. House of accused persons is adjacent to her house. When her mother-in-law went there, accused asked her to send her husband & son, they shall beat them and started man-handling her. Hearing this, her father-in-law came out of the house and went towards kola whereupon all the four together started assaulting him. Mohit with rod, Ramcharan with Chatwar, Rampyare & Ramavtar with lathi assaulted her father-in-law. Her son, husband, mother-in-law & she herself had witnessed the assault on her father-in-law. After hearing about the assault her husband had also reached towards kola. Janki & Suresh have also seen the incident. Ramcharan has assaulted her son Rajkumar by lathi. After seeing assault by the accused person on father-in-law, they came running towards him, at that time all the four persons assaulted her mother-in-law in the courtyard while she was running as a result of which she died there and her father-in-law died in Kola. They also searched Rajkumar in her house for beating him, however, her son jumped from the house and ran towards the field. When the accused persons saw her husband proceeding towards Bhuwan's house, they brought him dragging & beating towards their house from Bhuwan's house and dumped him near the body of her mother-in-law, by that time her husband was also dead. When she put water in her husband's mouth, it came out. Mohit went to his house, brought a heavy hammer and assaulted dead body of her father-in-law by it. Mohit came with heavy hammer in their courtyard and assaulted her husband and mother-in-law with that heavy hammer over their head. They also pushed her and said that they will kill her. All the four accused persons went in the search of her son, however, they could not get him and they went to lodge the report.

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In cross-examination in Para-3 this witness has stated that when her father-in-law was fixing peg, Rampyare had stopped him, at that time Rampyare was alone. Fixing of peg was started 8-9a.m. in the morning, however, she did not see as to who were present at the time as she had gone to fetch fodder for buffaloes towards field and returned from there at about 12.00 noon. Beating and wounding took place at 2.00 p.m., when she returned no quarrel had taken place. All the four accused persons were assaulting together, she could not say as to who gave first assault to her father-in-law. Four accused persons were standing where heap of soil was stacked. Her father-in-law was standing below the heap and all the four assaulted him from front. Kola is in joint possession of the complainant and accused persons and it was not partitioned. On seeing assaults over Tulsi, her mother-in-law started running and she was caught by the accused near courtyard. They were also in the courtyard when her mother-in-law was being assaulted. All four accused persons were assaulting together, when she was being assaulted her son jumped-out from mudded roof (Patao) and ran towards field. Her husband ran towards the house of Bhuwan. After the death of her father-in-law & mother-in-law she went near Kola to search her husband and then she came to know where they had fled. She saw her husband when they took him out beating from the house of Bhuwan. When they were dragging him, he was already dead. She has denied the suggestion that when they (deceased persons) were quarreling with the accused persons the villagers killed her mother-in-law, father-in-law & husband to take revenge and they are falsely implicating the accused persons.

In the lengthy cross-examination by the defence omissions such as assault by Mohitram with heavy hammer, accused persons saw her husband going towards the house of Bhuwan, assault over her mother-in-law in the courtyard, assault on Rajkumar by Ramcharan with lathi, have been pointed out in FIR of Ex.P-1. This

witness has admitted in the cross-examination that because of stacking of soil, passage before Rampyare's house had narrowed. She has also admitted that the villagers had excommunicated Tulsi and that he had enmity with some villagers. She has also admitted that Ramcharan had made a way by demolishing his house in order to avoid confrontation with Tulsi before 7-8 years. In Para 34 she has admitted the incident started on the fixing of peg. The dispute arose with her mother-in-law at that time her father-in-law reached there. In Para 42 she has stated that after the incident a person of her village came with the police in her house, however, she does not know the name of that person. The policeman did not record her statement and asked her to accompany him. When she went to lodge report no one went with her and she went to the Police Station Janjgir with that policeman. After lodging the report she had returned to village with the police inspector. Her statement was recorded near the place of incident.

VIMLA (PW-5):

17. This witness is daughter of deceased Bullu and complainant Nanki Noni Bai (PW-2). She has stated that when her father was fixing peg in Kola, accused persons abused him in the beginning, whereupon her grandfather (Tulsi) came there to see and they started assaulting Tulsiram. Mohit by rod, Jhuroo by Chatwar, Ramavtar & Rampyrae by lathi assaulted Tulsi. When her grandmother went there to inquire, all the four assaulted her also. Near Bhuwan's shop all the four assaulted her father. She has heard about the assault, however, she saw the accused persons dragging her father. Thereafter, Khorwa, Rampyare took her father near their home and assaulted by a rod and thereafter dumped him in her house. Mohit went to bring heavy hammer and gave three blows to her father over his head. Thereafter he crushed Baba (Tulsi) and grandmother by heavy hammer. At that time her brother was hiding in the house

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over mudding roof (patao). Jhurru gave one lathi blow to him whereupon he jumped from there and fled towards field.

In the cross-examination in Para-8 this witness has stated that incident of *maarpeet* took place at the time of fixing of peg. Her father returned from Janjgir after selling milk at about 10 a.m. and thereafter he had started fixing peg. However, she is not in a position to say that what was the time when peg was being fixed. She has admitted that at the time of beating, neighbourers had gathered. This witness has denied the suggestion that her father & grandfather were abusing accused persons whereupon Rampyare had shouted and on hearing the shout of Rampyare many villagers reached their and stopped Tulsi and Bullu from abusing Rampyare. She has also denied that upon this her father & grandfather started abusing the villagers also.

JANKI BAI (PW-11):

18. This witness is sister of deceased Kachra Bai and resides in Village Khisora. She has stated that she recognized all the accused persons. A day before the incident she had gone to Pendri for treatment and was staying with Kachra Bai. On that day her son Suresh had also came. On the next date of her arrival accused persons had abused Kachrabai for fixing peg. Kachrabai went towards kola, thereafter Tulsiram also went there and objected to abusing whereupon when Tulsiram went towards kola, Mohitram, Rampyare & Ramavtar assaulted him. Mohti by rod, Ramcharan by chatwar and Rampyare & Ramavtar by lathi assaulted Tulsi. Thereafter they chased Kachrabai beating her upto courtyard and beaten her there. Ramavtar & Rampyare by lathi, Ramcharan by chatwar and Mohitram by rod. After beating Kachrabai they searched the house including mud roof where Rajkumar was hiding who probably jumped and fled from their and they could not get him. They also did not find Bullu in the home. Afterwards they went outside. They were informed by their wives that Bullu is hiding in Bhuwan's house, they brought Bullu

from Bhuwan's house after beating him and dumped him in the courtyard. Mohit brought a heavy hammer from his home and assaulted Tusli in the kola, thereafter came in the courtyard and assaulted Kachrabai & Bullu with that heavy hammer. She has admitted that accused Rampyare is lame and is not able to walk without support. She expressed ignorance whether Rampyare alone was in the house when many villagers had gathered in the morning and when deceased Bullu, Tulsi and their family members were abusing accused persons.

In Para 11 she has stated that except Ramcharan other three accused persons assaulted Kachrabai first and thereafter Tulsi and at that time she had refrained them from beating. Tulsiram was first assaulted by Mohitram, thereafter other two accused persons, at that time she was standing there with Kachrabai. Tulsi fell on the ground, three accused persons came down of the heap, Kachrabai started running whereupon they chased her and assaulted her in the courtyard. All the four assaulted Kachrabai. At that time also she was standing in the courtyard. In para 14, she has further stated that after assaulting Kachrabai, three accused persons went outside possibly towards the house of Bhuwan, thereafter she saw that they were bringing Bullu from Bhuwan's house by beating and dragging him. In Para 15 she has admitted that when three accused persons brought Bullu, the dead bodies of Tulsi & Kachrabia were lying at the place where they were earlier.

In the cross-examination omissions regarding hurling abuses by the accused persons at about 1.30 to 2.00 pm. on the next date of her arrival, intervention by Kachrabai and assaults by heavy hammer have been pointed out. She has stated that on the date of incident she had gone to village Khokhar for treatment and returned from there at about 11-12 in the day and was present in the house of Kachrabai. She has denied her statement of Ex.D-2 that there was dispute regarding fixing of peg.

RAJU @ RAJKUMAR (PW-19):

19. This witness is the son of deceased Bullu Kashyap. He has stated that house of accused Rampyare is adjacent to his house, there was a dispute with Rampyare regarding land of kola since before. On the fateful day his grandfather (Tulsi) was fixing peg in the Kola, at that time he was sleeping in his home. On hearing the shouts at about 2.03-3.00 pm of '*kill-kill*', he all of a sudden woke-up and ran towards Kola. He saw from the gate of kola that Ramcharan by chatwar, Rampyare & Ramavtar by lathi and Mohitram by rod assaulting Tulsi, he was drenched in blood and had fallen on the ground. At that time his father Bullu also came there and after seeing the '*maarpeet*' he fled from there out of fear. All the four accused persons came to their house from Kola, at that time he was standing near the door of Kola, they were shouting that kill him and his father and thereafter Ramcharan assaulted him on his back by chatwar whereupon Mohit stopped him saying that he is brother do not kill him and proceeded forward. At that time they found Kachrabai and beaten her. His mother Nanki Noni came there and asked him to run away else they shall also kill him. Thereafter, he climbed over patao and remained there. Accused persons were searching him and his father. Mohitram climbed over the roof, hearing Mohit's voice he jumped from the patao and ran towards canal (bhata). At the time of sunset he went to the house of Dularsai and was hiding there. On hearing that the accused persons had murdered his father, grandfather & grandmother, he was returning with Dularsai and two others, on the way he met the police and thereafter he found that dead bodies of Bullu and Kacharabai were lying in his courtyard, whereas, dead body of Tulsi was lying in kola. Police had taken him to the doctor for examination, however, he could not be examined, as the doctor was not available. He has admitted that his grandfather had slapped son of Milawan as also son of Dilwa some 15-20 days prior to the date of incident, however,

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he has denied that any Panchayat was convened in this regard. He has expressed ignorance that 20-25 persons had called Tulsiram in the said Panchayat, Tulsiram refused to attend the Panchayat and ran away when he was called. He has admitted that the villagers have excommunicated them from the society because of their acts of injustice and he does not know that the villagers have alleged that his father & grandfather do injustice and exploit villagers. He has further stated that he does not know whether his father & grandfather had quarreled with Puniram, Milawan, Pirat, Kheekhram, Kusuram or not. In the morning he had gone to graze the buffaloes and returned at about 11.00 a.m. This witness has also admitted that there is trembling in the hands & legs of Rampyare, he cannot walk without support and he used to take help of lathi. His statement was recorded on the date of incident and thereafter police did not record his statement though he has been interrogated in the next day also. The Station House Officer interrogated him 3-4 times.

In the cross-examination omissions about witnessing the incident from the gate of kola, accused persons shouting 'kill-kill' 'kill them all' 'kill him and his father', have been pointed out. He has admitted that between the place where he was standing and place of incident, there are number of trees as also animal barn of the accused persons which is surrounded by wall.

20. From the statements of above four eye witnesses we observed that all the four have given almost identical version regarding;

a. name of the assailants.

b. Weapons used by them for assault.

c. Tulsi was assaulted at kola and thereafter Kachrabai was chased while she was running and she was assaulted in the courtyard.

d. Bullu was dragged-out from the house of Bhuwan, he was brought in the courtyard and was assaulted there.

e. Mohit brought heavy hammer from his home and assaulted Kachrabai &Bullu by it in the courtyard. In the morning, on the date of incident, witness Nanki Noni (PW-2) had gone to the field to collect fodder who returned from there at 12.00 noon. Whereas, Janki had gone to Village Khokhar and returned from there at about 11-12 in the day. Witness Rajkumar had gone to graze the buffaloes and returned from there around 10-11 a.m. in the day.

21. With respect to the time and circumstances in which quarrel began Nanki Noni (PW-2), Vimla (PW-5) as also Raju (PW-19) have stated that because of fixing of peg in the kola verbal altercation arose between Tulsi, Kachrabai & accused persons in the kola at about 8-9 a.m. Initially, Nanki Noni has stated that at that time she had gone to collect fodder and returned from there at 12.00 noon, till then incident had not taken place. However, subsequently she has stated that now she recollects that incident started because of fixing of peg and quarrel had taken place only because of this. She had further stated that incident occurred at 2-2.30 p.m. in the day and after hearing the noise she along with her daughter had reached to the place of incident. Normal exchange took place between her mother-in-law and accused persons, however, after reaching of her father-in-law there, hot exchange started.

22. On the other hand, Vimla (PW-5) has categorically stated that her father returned from Janjgir at 10 am, thereafter he started fixing peg and 'maarpeet' took place at the time of fixing peg. According to this witness, the incident of assault on Tulsi and her father had taken place in the morning at the time of fixing peg. Whereas, PW-11 Janki Bai has claimed that incident of assault had taken place at about 1.30-2.00 p.m. in the day. She has denied her version in her diary statement Ex.D-2 that because of fixing of peg dispute arose.

PW-19 has also stated that incident occurred at 2.30-3.00 in the day, on that day he had gone to graze his buffaloes and returned from there at 10-11.00 a.m. and slept thereafter. While he was sleeping, he heard the noise of 'Maro-Peeto' and thereafter he witnessed the incident. He has stated that when his grandfather was fixing peg, he was sleeping in the home.

23. After close scrutiny of the statements of these witnesses, we find material discrepancies with respect to time of incident whether the incident of assault occurred in the morning around 8-9 a.m. at the time of fixing peg or whether the incident occurred in the afternoon between 1.30-3.00 p.m., as claimed by alleged eyewitnesses. Apart from various omissions present in their respective case diary statements & FIR, we also observed that Nanki Noni Bai (PW-2), Vimla (PW-5) & Rajkumar (PW-19) have stated that Tulsi & Kachrabai were assaulted by all the four accused persons, whereas, PW-11 Janki Bai has categorically stated that except accused Ramcharan other three accused persons have assaulted Tulsi & Kachrabai in the beginning. Prosecution witnesses, particularly, Vimla (PW-5) & Raju (PW-19) in their examination have admitted that accused Rampyare is lame and he is not able to walk without support. There is also evidence that hands & legs of this accused trembles. However, the argument of defence in this regard has been rejected by the trial court on the ground that no medical evidence about the same is produced and he had occasion to observe the accused and he has found that he was not lame. The aforesaid observation has been recorded only in the judgment. The accused was present when prosecution witnesses were examined and cross-examined, however, no such observation was recorded by the concerned Judge in the proceedings on the date of their examination. Thus, in absence of any material on record the observation of trial court in the judgment for the first time is improper. Considering the disability of accused Rampyare, the act

attributed to him by the prosecution witnesses appears to be improbable.

24. The case of the prosecution, as unfolded from the FIR (Ex.P-1), is that the incident occurred at 2.00 p.m. and the report of the same was lodged at 3.35 p.m. by Nanki Noni (PW-2). PW-22 Shri V.S. Kerketta, A.S.I, Police Station Janjgir has registered the F.I.R. (Ex.P-1) on the information of Nanki Noni (PW-2) and also proved the Merg Intimation Ex.P-51 & Inquest Ex.P-16 of deceased Tulsirami; Merg Intimation Ex.P-52 & Inquest Ex.P-17 of deceased Kachrabai and Merg Intimation Ex.P-52 & Inquest Ex.P-15 of deceased Bullu. He has claimed that copy of same was forwarded to the concerned Magistrate but he has not stated the time & date when the same was forwarded to the Magistrate concerned, as the same is not available in the charge sheet. FIR does not bear any endorsement regarding the time and date on which the same was forwarded to the Magistrate and there is no receipt of the Court of Magistrate. He has also claimed that after registering the offence special report of incident was sent by him to the superiors though no such report has been filed with the charge sheet. This witness has denied that information about the murder of three persons in Village Pendri was received at about 10-10.30 a.m. in the morning and thereafter he had sent Dwarika, Kotwar of Village Sukhli to village Pendri.

25. Dwarika (PW-13) is the witness of seizure memos Ex.P-5, Ex. P-13, Ex.P-8 & Ex.P-6 by which plain soil and blood stained soil has been seized from the place of incident. All the seizures were effected from the spot on the date of incident i.e. 13.10.1996. In the cross-examination this witness has stated that he is Kotwar of Village Sukhli, he had gone to Police Station Janjgir around 10.20-10.45 a.m., around 11-11.30 a.m. he went to Village Pendri with the police constable and there they found two dead bodies lying in the courtyard. Seizures were completed by 2.30 to 3.00 p.m. PW-2

Nanki Noni has also stated in Para 4 of her examination-in-chief that a person of her village came with the police in her house, the police took her to the Police Station and thereafter she lodged the report of Ex.P-1.

26. Thus, from perusal of the statement of PW-2 Nanki Noni, PW-13 Dwarika it appears that information regarding incident in village Pendri was already received by the police even before the registration of offence, the police party was already dispatched to the spot and only thereafter complainant Nanki Noni came to the police station along with police personnel and lodged the report Ex.P-1, which throws serious doubt about the fact that incident had occurred at 2.00 p.m. and report was lodged at 3.35 p.m. for the first time. This discrepancy in the investigation attains significance in the light of evidence available on record and as pointed out earlier that there is a discrepancy in the version of alleged eyewitnesses regarding exact time of incident.

27. The fact that there is no evidence that the copy of FIR was sent to the Magistrate concerned much less promptly and also the fact that there is no evidence that the special report about the registration of offence was sent to the superior officers cast serious doubt about the authenticity of the FIR. The Hon'ble Apex Court in the matter of **Mehraj Singh Vs. State of U.P.** reported in **1994 (5) SCC 188** while underlining the importance of FIR in Para 12 of its judgment held thus;-

> "FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the

weapons, if any, used as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at served a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it colour of a promptly lodged FIR."

The Hon'ble Apex Court in the matter of **Thanedar Singh Vs. State of M.P.** reported in **(2002) 1 SCC 487** referring Paragraph

12 of the judgment in the matter of Mehraj Singh (supra) with approval that;

> 'the evidence of the date of sending copy of FIR to the Magistrate Court was not adduced by the prosecution inspite of being given opportunity. Crime number/FIR was not found in the inquest report, site plan or requisition sent to the hospital for the post-mortem. No reference was made in the inquest report about the information, if any, furnished by PWs. It was held that the fact cast a serious doubt on the correctness of the FIR, especially the time and date of its recording. All this would support the defence version that FIR in which the names of the accused were mentioned would have probably come into existence much later."

In the matter of **Alla China Apparao and others Vs. State of A.P.** reported in **(2002) 8 Supreme Court Cases 440,** the Hon'ble Apex Court held that;

> "the delay in sending the FIR to the Magistrate forthwith, it cannot be taken, *ipso facto,* to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same affect the veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations."

The Hon'ble Apex Court in the matter of **Bijoy Singh and another Vs. State of Bihar** reported in **(2002) 9 Supreme Court**

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Cases 147 has reiterated the significance of requirement to forward forthwith the copy of FIR to the Magistrate and effect of delay in sending the copy. In this judgment it has been held that;

> "……Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it. When no explanation is offered for the delay, the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not.

28. Apart from the discrepancy in the FIR, as pointed out above, we also observed that no site plan is available in the charge sheet, though the investigating officer who reached the spot after registering the FIR on 13.10.1996 has claimed that he has prepared the site plan. Names of relatives of deceased, persons who were present at the time of inquest and the names of witnesses have not been mentioned in the inquest report. Even the crime number does not find place in the inquest report & requisition for the postmortem of the deceased persons. The Hon'ble Apex Court in the matter of Mehraj Singh (supra) has adversely commented upon the fact that the number of FIR or crime number was not found in the inquest report or in the requisition for the postmortem. The fact situation is more or less the same here. Moreover, PW-19 Raju was interrogated by the Station House Officer on 13.10.1996 itself but his diary statement is shown to be recorded only on 14.10.1996.

29. PW-18 S.N. Pateriya, who was Station House Officer in the Police Station Janjgir at the relevant time, had taken over the investigation after registration of crime. This witness in Para 21 of his deposition has stated that accused persons were taken into

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custody on 13.10.1996 and they were formally arrested only at 2300 hrs on 14.10.1996, whereas, in Para 25 has stated that he did not arrest the accused persons on 13.10.1996. During investigation the accused persons remained with them. He has denied the suggestion that he did not go to Village Pendri on 13.10.1996. He has further denied that the accused persons were not arrested on 13.10.1996 since there was no evidence available against them till that time. Memorandums and seizure in pursuance thereof was done between 10.00 a.m. to 11.30 a.m. on 14.10.1996. However, in Para 28 he has again stated that on 13.10.1996 he was not present, therefore, he could not record the diary statement of Akti Prasad & Bhuwan Prasad. There is no explanation as to why they were not arrested despite being named in the FIR in a serious offence involving murder of three persons. Therefore, we are of the considered view that there is much force in the arguments of learned counsel for the appellants that there was no evidence available with the investigating officer about the involvement of appellants in the above crime and all the documents including the FIR, inquest report, merg intimation etc. were prepared subsequently on the following day and there is antedating in these documents. The dead bodies were received for postmortem in the mortuary between 10.11 a.m. on 14.10.1996 though the time of dispatching the dead bodies is shown as 1800 hrs on 13.10.1996 and distance of mortuary from the Village is just two kilometers. Alleged eyewitnesses are undoubtedly deeply interested in the prosecution as they are wife, son & daughter of deceased Bullu, however, this by itself cannot be a ground to discard their testimony. It, however, puts this Court on its guard to scrutinize their evidence more carefully in the light of the fact that the independent witnesses named in the FIR have not been examined and witnesses who have been examined have not supported the case of the prosecution.

30. We have already observed in the forgoing paragraphs that as per accounts given by the alleged eyewitnesses there are material discrepancies in the time of incident, though there is evidence that incident occurred at the time of fixing peg in the morning at about 8-9.00 a.m., but according to the version given by Nanki Noni (PW-2), Janki Bai (PW-11) & Raju @ Rajkumar (PW-19) the incident of assault had taken place in between 1.30-3.00 p.m. On the other hand, Vimla (PW-5), daughter of deceased Bullu & complainant Nanki Noni, has stated that incident of *maarpeet* occurred in the morning around 10.00 a.m. when her father was fixing peg , which was objected to by the accused persons. As already pointed in the foregoing paragraphs, other three alleged eyewitnesses except Vimla have admitted in their deposition that they were not present in their home in the morning, as they had gone out in connection with grazing buffaloes, bringing fodder and for treatment to Village Khokhar, therefore, account of incident given by these witnesses do not inspire our confidence. Thus, their presence in the morning in the place of incident appears to be doubtful.

31. Apart from the above ocular evidence the prosecution has also affected seizure on the memorandums of the accused persons and as per Serologist report following articles belonging to the accused persons was found to be stained with human blood.

- Shirt & Pant (L1 & L2) of accused Ramavtar
- Rod (N) of Mohitram
- Lathi & Dhoti (P & Q) of Ramcharan
- Lungi (S1) of Rampyare.

32. We have already held in the foregoing paragraphs that there is manipulation in timing in the FIR and deliberate manipulation in the FIR cast serious doubt upon the authenticity of impartial investigation. Articles seized and sent to FSL and thereafter Serologist for examination have not been produced during trial despite specific objection in this regard from the defence side. Therefore, in our considered opinion much credence cannot be

attributed to the presence of human blood in the articles seized from the accused persons particularly when there is no evidence that the same belong to the blood group of deceased persons.

33. So far as the law laid down in the matter of Bikau Pandey (supra) is concerned, in the cited case jurisdictional issue based on purported age of the accused was raised based on Juvenile Act. However this question was never raised before the courts below i.e. trial court and in appeal. The arguments based on Juvenile Act was not in existence at the time of occurrence, the necessity of determining the age of accused arises when the accused raises a plea and the Court entertains a doubt. However, the plea was considered and a decision was rendered that he was not a child and in these circumstances it was held that plea that school register was wrong by accepting the self-serving affidavit filed by the father of the child is untenable. In these facts, the Hon'ble Apex Court relying upon its earlier judgments has held that even if there are irregularities or illegalities in the conduct of investigation that is of no consequence. However, in the instant case after closely examining the evidence adduced by the prosecution, we have reached the conclusion that the prosecution has deliberately suppressed the origin and genesis of offence. There are discrepancies about the time of the incident, FIR, first on the point of time on the basis of which police authority reached place of occurrence and took the complainant to the police station has been suppressed. FIR (Ex.p-1) appears to be drawn subsequently and it is ante-timed and anti-dated. Presence of alleged eyewitnesses namely Nanki Noni (PW-2), Janki (PW-11) & Raju @ Rajkumar (PW-19) on the place of incident has been held to be doubtful. In these circumstances the irregularities in the investigation, as pointed out by the defence goes to root of the matter and the same creates serious doubt in our mind regarding authenticity of the FIR (Ex.P-1) and investigation done by the prosecution on the basis of said manipulated FIR.

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34. On the basis of aforesaid analysis, we are of the considered opinion that the impugned judgment convicting the appellants, as mentioned in Para 1 of this judgment, cannot be sustained and both the appeals have to be allowed by extending benefit of doubt to the appellants.

35. Accordingly, the appeals i.e. Criminal Appeal No.344/2001 preferred by appellant Ramcharan & Criminal Appeal No.382/2001 preferred by appellants Rampyare, Ramavtar & Mohitram succeed. The impugned judgment of conviction of appellants Ramcharan, Rampyare, Ramavtar & Mohitram under Section 302/34 of the IPC and sentence imposed on them under that section are hereby set aside. The appellants are acquitted of that charge. They be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-